

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

NEVADA NEW BUILDS, LLC,

Plaintiff(s),

v.

GREEN TREE SERVICING LLC, et al.,

Defendant(s).

Case No. 2:15-CV-791 JCM (CWH)

ORDER

Presently before the court is plaintiff Nevada New Builds, LLC's ("NNB") motion to remand the case to state court. (Doc. # 8). Defendant Green Tree Servicing, LLC ("Green Tree") filed a response in opposition. (Doc. # 12). Plaintiffs did not file a reply, and the deadline to reply has now passed.

I. Background

The present case involves a dispute over real property located at 5710 E. Tropicana Avenue, Unit 2007 in Las Vegas, Nevada (the "property"). (Doc. # 8 at 2). Patsy S. Fielden and Howard D. Fielden (the "Fieldens") purchased the property on April 25, 2005. (Doc. # 12 at 2). The Fieldens secured the purchase with a \$130,500.00 loan from USAA Federal Savings Bank ("USAA"). (*Id.*) Defendant Green Tree is the beneficiary of the first deed of trust which encumbers the property. (Doc. # 8 at 2).

At some point, the Fieldens stopped paying their HOA dues to defendant Canyon Willow Tropicana HOA ("Canyon HOA"). On March 21, 2014, plaintiff purchased the property at a trustee's sale conducted by Canyon HOA. (*Id.*) The deed of sale was recorded on March 24, 2014. (Doc. # 12 at 2).

1 Plaintiff filed suit in the Eighth Judicial District Court, Clark County, Nevada against
 2 USAA and Canyon HOA on March 5, 2015. (Doc. # 1-2). Plaintiff asserted three causes of action
 3 against defendant USAA: (1) quiet title; (2) cancellation of instruments; and (3) injunctive relief.
 4 (*Id.*). Plaintiff asserted two causes of action against defendant Canyon HOA: (1) breach of contract;
 5 and (2) indemnification. (*Id.*). Plaintiff filed an amended complaint on March 27, 2015, replacing
 6 previously-named defendant USAA with defendant Green Tree. (Doc. # 1-3).

7 Defendant Green Tree removed the action to federal court on April 28, 2015 under 28
 8 U.S.C. § 1441(b). (Doc. # 1). Plaintiff is a Nevada limited liability company. (Doc. # 1-2 at 2).
 9 Defendant Green Tree is a foreign limited liability company registered to do business in the state
 10 of Nevada. (*Id.*). Defendant Canyon HOA is a Nevada non-profit corporation. (*Id.* at 3).

11 The parties now dispute whether Green Tree properly removed this action to federal court.
 12 (Docs. # # 1, 8, 12). Green Tree argues that the citizenship of defendant Canyon HOA should be
 13 disregarded because it was fraudulently joined as a party to this litigation. (Doc. # 1 at 3). Plaintiff
 14 disagrees and now moves to remand the case back to state court because diversity is not complete.
 15 (Doc. # 8).

16 **II. Legal Standard**

17 Removal to federal court based on diversity jurisdiction is proper if “none of the parties in
 18 interest properly joined and served as defendants is a citizen of the State in which such action is
 19 brought.” 28 U.S.C. § 1441(b). The party seeking to invoke federal jurisdiction bears the burden
 20 of establishing jurisdiction. *Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir.
 21 1990). Removal statutes are construed restrictively, and any doubts about removability are
 22 resolved in favor of remand. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

23 Remand to state court is proper if the district court lacks subject matter jurisdiction over
 24 the asserted claims. 28 U.S.C. § 1447(c). Federal district courts have diversity jurisdiction over
 25 suits for more than \$75,000 where the citizenship of each plaintiff is different from that of each
 26 defendant. 28 U.S.C. § 1332(a). Although an action may be removed to federal court only where
 27 there is complete diversity of citizenship, 28 U.S.C. §§ 1332(a), 1441(b), “one exception to the
 28 requirement for complete diversity is where a non-diverse defendant has been ‘fraudulently

1 joined.” *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001).

2 Joinder is fraudulent “[i]f the plaintiff fails to state a cause of action against a resident
3 defendant, and the failure is obvious according to the settled rules of the state.” *Hamilton*
4 *Materials Inc. v. Dow Chemical Corp.*, 494 F.3d 1203, 1206 (9th Cir. 2009) (quoting *McCabe v.*
5 *Gen. Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987)) (alteration in original).

6 “Fraudulent joinder must be proven by clear and convincing evidence.” *Hamilton*
7 *Materials*, 494 F.3d at 1206. The removing defendant bears the burden of proving that removal is
8 appropriate and is entitled to present facts showing that joinder is fraudulent. *McCabe*, 811 F.2d
9 at 1339.

10 In such a case, the district court may ignore the presence of that defendant for the purpose
11 of establishing diversity. *Morris*, 236 F.3d at 1067; see also *Hunter v. Philip Morris USA*, 582
12 F.3d 1039, 1043 (9th Cir. 2009).

13 **III. Discussion**

14 In its petition for removal to federal court, defendant Green Tree asserts that defendant
15 Canyon HOA was fraudulently joined to the litigation because, under Nevada law, “a [sic] HOA
16 foreclosure deed contains no warranty of title,” so plaintiff may not bring claims against Canyon
17 HOA for breach of contract or indemnification. (Doc. # 1 at 3). Plaintiff argues that it did not
18 fraudulently join defendant Canyon HOA to this litigation. (Doc. # 8 at 4). Plaintiff asserts,
19 however, that if Canyon HOA “failed to comply with the requirements of Nevada laws as to the
20 applicable notices related to the foreclosure proceedings, it would be liable to [p]laintiff for breach
21 of contract” and indemnification, as Canyon HOA expressly represented that it complied with the
22 requirements of Nevada law in the foreclosure deed provided to plaintiff. (*Id.* at 5).

23 Fraudulent joinder is established only if a plaintiff fails to state a cause of action against a
24 non-diverse defendant and the failure is obvious according to settled rules of law of the state in
25 which the action was brought. *Ritchey v. Upjohn Drug Company*, 139 F.3d 1313 (9th Cir. 1998).

26 The court must determine: with all factual and legal issues resolved in plaintiff’s favor, has
27 the defendant brought forth clear and convincing evidence that, based on the complaint as framed
28

1 by the plaintiff against defendant Canyon HOA, there is absolutely no possibility that plaintiffs
2 could prevail on any of their claims in Nevada state court.

3 Here, the answer to this question is no. Plaintiff brings two causes of action against
4 defendant Canyon HOA: (1) breach of contract; and (2) indemnification under a theory of unjust
5 enrichment. (Doc. # 1-3 at 6). The court will first address whether plaintiff could possibly prevail
6 on its claim for indemnification under the theory of unjust enrichment.

7 Plaintiff has stated a colorable claim against Canyon HOA for indemnification under the
8 theory of unjust enrichment. In Nevada, a claim for unjust enrichment exists when (1) the plaintiff
9 confers a benefit on the defendant; (2) the defendant appreciates such benefit; and (3) the defendant
10 accepts and retains the benefit under circumstances such that it would be inequitable for him to
11 retain the benefit without payment of the value thereof. *Certified Fire Prot. Inc. v. Precision*
12 *Constr.*, 128 Nev. Adv. Op. 35, 283 P.3d 250, 257 (2012) (citing *Unionamerica Mtg. v. McDonald*,
13 97 Nev. 210, 212, 626 P.2d 1272, 1273 (1981)). (internal quotations omitted). Here, plaintiff states
14 that “[i]n the event [that] title . . . is not quieted to [p]laintiff, it will be damaged and [d]efendant,
15 HOA, will be unjustly enriched as a result of its actions and/or omissions.” (Doc. # 1-3 at 6).
16 Plaintiff goes on to say that, if this happens, it will suffer damages and will be “entitled to be
17 indemnified by [d]efendant, HOA, for all such losses or damages” (*Id.*).

18 Whether Canyon HOA is liable to plaintiff for indemnification under the theory of unjust
19 enrichment is a question for the Nevada state courts. Nevada law does not bar such a claim.
20 Plaintiff’s indemnification and unjust enrichment claim presents a question of law and fact for a
21 Nevada court. That is sufficient to defeat Green Tree’s fraudulent joinder argument. Therefore, the
22 court will not address whether plaintiff’s claim for breach of contract could possibly survive before
23 a Nevada state court.

24 **IV. Conclusion**

25 This court finds that plaintiff did not fraudulently join defendant Canyon HOA to this
26 action. Therefore, complete diversity does not exist, making removal to this court on the basis of
27 diversity jurisdiction improper. *See* 28 U.S.C. § 1441(b). In view of the foregoing, plaintiff’s
28 motion to remand is granted.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff's motion to remand the case to state court (doc. # 8), be, and the same hereby is, GRANTED.

James C. Mahan
UNITED STATES DISTRICT JUDGE